"Neo-liberal macroeconomics and Kenya's human rights- oriented constitution: Contradictions and the need for an alternative"[1]

Presentation outline

- Broad introduction- context setting;
- Laying out the picture of contrast- neoliberal economic policy objectives and practise versus human rights oriented constitution;
- Brief conclusion.

I. Introduction, context setting

Kenya is at a cross roads: enormous opportunities exist with the adoption of a very progressive constitution YET there are challenges of a dominant and retrogressive status quo, as epitomized in the country's neo-liberal vision for social and economic development (e.g. Kenya Vision 2030).

i) Key planks of the Kenyan Constitution[2]

- Devolved governance (inclusive, accessible, participatory and accountable governance)- to deepen accountability and participation, de-concentrate power from the centre a second level of government, the county governments (with executive and legislative arms) is in place; there's a two chamber legislature; restructured cabinet (trim, portfolio rationalization, non-elective);
- Human rights entrenched- with principle of indivisibility of human rights; an elaborate affirmation of socio-economic rights (expansive bill of rights); monitoring and implementation mechanisms;
- Bold equity agenda in Public Finance Management (creates scope for redistribution of resources)- there's an equalization fund (annual allocation of 0.5% of national revenue) to address exclusion and marginalization and devolution of resources (at least 15% of national revenues annually) to the second tier County governments; equitable public finance management principle entrenched- elaborate mandate for the Commission on Revenue Allocation (a constitutional commission) on steering equitable public finance management through proposing to legislature a revenue allocation formula etc.;
- Principles of equality, non-discrimination entrenched; reformed public service ethos (service, inclusion);
- Institutional mechanisms to deliver constitutional promises/agenda- independent constitutional commissions to advance and monitor implementation (including a human rights commission); elaborate legislative and administrative agenda.

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[1] *My intention is to outline the Kenyan example as I think it provides a very illuminating exposition into the interplay of macroeconomic policy and human rights at a practical level.*

[2] *See http://www.kenyalaw.org/klr/index.php?id=741 for a copy of the Constitution of Kenya*

ii) Overview of Kenya's economic policy outlay

- Kenya's economic policy paradigm predominantly tailored on the neo-liberal orthodoxy-evidenced in the analysis and policy prescriptions adopted (currently in the Vision 2030, the country's development blue print[3])
- Problematic assumptions (e.g. market efficiency) underpin the drive for economic growth –the nature/pattern of economic growth undermines human rights goals- trickle down ethos i.e. "seek ye first the kingdom of economic growth and all else will follow"; HENCE there is skewed growth which only benefits a few (Kenya has high levels of inequality as indicated in its gini-coefficient); -pre-occupation with economic growth (as an end in itself) over human development results in poor development outcomes- effectively a growth trajectory that is NOT sustained; broad-based or equitable;
- Vision 2030 has a predominant focus on enhanced growth and sectoral efficiency, WITHOUT addressing underlying structural constraints/drivers of inequality; very limited focus on employment creation. Is mainly an export-led growth model (predominantly focused on primary commodities)- but fails to take cognizance of the negative effects of the high levels of inequality- which ultimately undermine gains (i.e. minimal impact on poverty);
- Resource allocation modalities entrench inequality- focus on big projects; claims to imitate the East Asian model- BUT without including some of the fundamentals of that model which would tackle Kenyan realities of inequality (e.g. on land redistribution, affirming regulatory role of the state);
- Problematic growth formula- growth projections are not realistic and unprecedented in the country's history- blind to human rights and as designed will exacerbate inequality.

II. Contrasted and contradictory: an economic policy paradigm that is at cross purposes with the forward looking human rights oriented constitution

Kenya's economic policy is not designed with a lens of human rights standards (as enshrined in constitution and subsidiary legislation); there is a fundamental divergence between the human rights aspirations of the constitution and the economic policy trajectory;

An assessment of the country's key economic policy instruments (fiscal, monetary and trade policy; and the investment strategy (FDI) and their implications for the constitution's human rights vision is very revealing:

Fiscal and monetary policies

- **Inflation and deficit targeting**; combined with the cash budgeting (live within your means) mantra-undermines ability to address social crisis and makes human development vulnerable to cut backs; the focus on inflation follows a traditional neo-liberal slant- no balance sought with employment creation- stated intention to keep interest rates low, and even this is hardly ever attained;
- **Financing targets (taxation)**- have not managed to raise the projected revenues- taxes are non-progressive in nature (mainly wage income taxes; no big focus on corporate taxation or on profits in the drive/over reach for FDI)- mainly due to entrenched inequalities- therefore fiscal policy is not seeking to advance equity;
- **Lack of effective financial sector regulation due to collusion** (policy makers are also interested parties) and policy for massive deregulation of the financial sector- Kenya is committed to financial liberalization and liberalization of its capital account regime. This allows all sorts of money (including dirty money to come in to the country- note there is a bulging underground economy)– hence pressure to keep interest rates high to defend the shilling, which leads to attraction of short term inflows (mainly going to the real

[3] *See http://www.vision2030.go.ke/index.php/home/library for information on the Vision 2030*

estate market and defended by the Central Bank)- creates vulnerability with outflows- THUS to create reserves (due to a weak exports base), Kenya resorts to short term IMF borrowing (and the strangle hold this brings with conditionality; rising public debt etc.)

- **Harmful impact of external policy prescriptions (IFI knowledge roles)** is to constrict autonomous policy choice and prioritization resulting in economic policies that are inconsistent with HR obligations (e.g. the IMF's policy advise and World Bank's negative analytical influence on Kenya's devolution agenda)-fiscal and monetary policy decisions taken at the behest of IFIs, opacity and minimal participation by citizenry or their elected representatives in economic policy decision making closes off real consideration of trade-offs or alternatives - policy space is key for driving desired economic and social outcomes promised by the constitution;
- **Illicit capital flight**[4] is rampant in Kenya- recent estimates suggest that as much as $3bn may have been illicitly transferred abroad by wealthy individuals and companies seeking protective havens for their wealth or in order to avoid, evade or minimize their tax obligations;
- **Currency speculation**[5] is also a recognized lucrative business in Kenya (made possible by the deregulation of finance, including capital account liberalization and the freedom to engage in international electronic trading**);**
- Kenya's speculative trade also thrives through the so-called **'underground economy'**- this economy involves the small *jua kali* sector (informal sector) as well as big time criminals engaged in narcotics and arms trade, money laundering and piracy. Some estimates suggest that the size of this economy may be as big as 25% of Kenya's GDP. If income distribution in this sector is as skewed as the national picture, then perhaps as few as 10% of the players in this economy may well command as much as 15% of GDP of cash outside the formal economy. This means large volumes of cash – shillings and foreign exchange – including counterfeit notes are floating around the country. Banking industry players speak of people visiting their banks in East Leigh (a residential settlement in Nairobi mainly habited by Somali immigrants and refugees in Kenya) with sack loads of currency. Such players have a capability to influence the volume of foreign exchange traded- criminal money moves around (in and out) and is cleaned relatively easily in the economy;
- There is a conflict of roles and interests- those with the political responsibility to regulate the financial system for efficiency and equitable growth also have interests in the banking sector and personally benefit from the freedom to move capital in and out. As such, stringent regulation would be tantamount to attacking own interests.

Trade policy is absolutely liberalized and Kenya is a source of massive capital outflows (illicit capital flight); there is no focus on small scale holders, hence the country's constant need to import food etc. Effectively, there are far-reaching effects of trade and finance liberalization on the socio-economic rights agenda.

III. Conclusions

There are negative implications of the orientation of Kenya's fiscal and monetary policy on human rights. For instance, austerity measures do constrain public spending for advancing the fulfilment of socio economic rights; economic policy trajectory yields jobless economic growth; the pursuit of inflation targeting (interest rate control) and public sector wage ceilings/caps affect frontline workers in the essential services sector; financial liberalization has occasioned volatility, deepened inequalities and poverty;

There's need to rethink the rules and economic policy fundamentals in Kenya; the constitution's aspirations and provisions for a more human rights based and equitable society demands it.

[4] *See article on dirty money flows in Kenya for an elaborate exposition http://www.abugre.com/index.php/econ/global-finance/72-part-1*
[5] *See article discussing this issue http://www.pambazuka.org/en/category/features/77660/print*